

2005 Montana Legislature

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HOUSE BILL NO. 611

INTRODUCED BY WINDY BOY, BERGREN, HANSEN, CAFERRO, NOONAN, MCALPIN, EATON, HARRINGTON, ELLINGSON,  
MUSGROVE, WILLIAMS, BUZZAS, TESTER, PEASE

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTIES FOR PARTNER OR FAMILY MEMBER ASSAULT;  
~~PROVIDING THAT A SECOND OFFENSE IS A FELONY; REMOVING THE PROVISIONS THAT A THIRD OFFENSE MAY BE A~~  
~~MISDEMEANOR~~; AND AMENDING SECTION 45-5-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 45-5-206, MCA, is amended to read:

**"45-5-206. Partner or family member assault -- penalty.** (1) A person commits the offense of partner or family member assault if the person:

- (a) purposely or knowingly causes bodily injury to a partner or family member;
- (b) negligently causes bodily injury to a partner or family member with a weapon; or
- (c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 45-5-231 through 45-5-234, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, ~~and~~ adoptive children and parents, ~~or relationships created through foster care, including~~ AND foster parents and foster children. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) (i) An offender convicted of ~~partner or family member assault~~ a first offense under this section shall be fined an amount not less than ~~\$100~~ \$250 or more than \$1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than ~~24~~ 72 hours ~~for a first offense~~.

(ii) An offender convicted of a second offense under this section shall be fined an amount not less than ~~\$200~~ \$350 or more than \$1,000 and be imprisoned in ~~the county jail or state prison~~ THE COUNTY JAIL for not less than ~~72 hours or more~~ than 7 DAYS OR MORE THAN 1 year or more than 2 years.

(iii) Upon a first ~~or second~~ OR SECOND conviction under this section, the offender may be ~~ordered into~~ placed on misdemeanor probation as provided in 46-23-1005.

(iv) On a third or subsequent conviction ~~for partner or family member assault~~ under this section, the offender shall be fined an

~~amount~~ not less than \$500 and not more than \$50,000 and be imprisoned ~~in a state prison~~ for a term not less than ~~30 days 1 year~~ 90 DAYS and not more than 5 years. ~~If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.~~ IF THE TERM OF IMPRISONMENT DOES NOT EXCEED 1 YEAR, THE PERSON SHALL BE IMPRISONED IN THE COUNTY JAIL. IF THE TERM OF IMPRISONMENT EXCEEDS 1 YEAR, THE PERSON SHALL BE IMPRISONED IN THE STATE PRISON.

(v) If the offense was committed within the vision or hearing of a minor, the judge shall consider the minor's presence as a factor at the time of sentencing.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic abuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for assault with a weapon under 45-5-213, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, controlling behavior, dangerousness, and chemical dependency. An investigative criminal justice report, as defined in 45-5-231, must be copied and sent to the offender intervention program, as defined in 45-5-231, to assist the counseling provider in properly assessing the offender's need for counseling and treatment. Counseling providers shall take all required precautions to ensure the confidentiality of the report. If the report contains confidential information relating to the victim's location or not related to the charged offense, that information must be deleted from the report prior to being sent to the offender intervention program.

(b) The offender shall complete all recommendations for counseling, referrals, attendance at psychoeducational groups, or treatment, including any indicated chemical dependency treatment, made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a preliminary assessment for counseling, as defined in 45-5-231. The offender shall complete a minimum of 40 hours of counseling. The counseling may include attendance at psychoeducational groups, as defined in 45-5-231, in addition to the assessment. The preliminary assessment and counseling that holds the offender accountable for the offender's violent or controlling behavior must be:

- (i) with a person licensed under Title 37, chapter 17, 22, or 23;
- (ii) with a professional person as defined in 53-21-102; or
- (iii) in a specialized domestic violence intervention program.

(c) The minimum counseling and attendance at psychoeducational groups provided in subsection (4)(b) must be directed to the violent or controlling conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 40 hours. Subsection (4)(b) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent or controlling conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's

reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) The court shall provide an offender with a written copy of the offender's sentence at the time of sentencing or within 2 weeks of sentencing if the copy is sent electronically or by mail."

- END -

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**Latest Version of HB 611 (HB0611.03)**

Processed for the Web on March 10, 2005 (5:13pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

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Prepared by Montana Legislative Services

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# FISCAL NOTE

**Bill #:** HB0611

**Title:** Increase penalties for partner or family member assault

**Primary Sponsor:** Windy Boy, J

**Status:** As Amended in House Comm. Revised

Sponsor signature

Date

David Ewer, Budget Director

Date

## Fiscal Summary

	<b><u>FY 2006 Difference</u></b>	<b><u>FY 2007 Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$0	\$0
<b>Revenue:</b>		
General Fund	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	\$0	\$0

- ☒ Significant Local Gov. Impact
- ☐ Included in the Executive Budget
- ☐ Dedicated Revenue Form Attached

- ☐ Technical Concerns
- ☐ Significant Long-Term Impacts
- ☐ Needs to be included in HB 2

## Fiscal Analysis

### ASSUMPTIONS:

1. The amendments to this bill strike the language that would sentence those convicted of PFMA only to a state prison and allows imprisonment to occur in a county jail.
2. Because imprisonment can occur in a county jail, the proposed bill no longer has fiscal impact to the Department of Corrections but could have significant impact on county jails.

### EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

This legislation could significantly impact county jail populations thus will increase the local jail costs.